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Congress Was Misled on Nuclear Thefts, Agency Says

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WASHINGTON, Feb. 25—A special investigation by the Nuclear Regulatory Commission has concluded that its top staff official misled Congress in saying the commission had no evidence that atomic materials had ever been stolen.

While saying that there was no information indicating the official had meant deliberately to deceive, the highly unusual investigation found that he "testified incorrectly" last summer in agreeing with a statement that the members of the commission "believe that no significant quantities of special nuclear materials have ever been diverted or stolen."

Exactly what the Government knows about any weaknesses in the system to protect nuclear materials is important because of its effect on narrow decisions of whether additional safeguards are required and on far broader questions of atomic policy. One such broad question is whether the United States and the rest of the world should continue developing reactors that burn plutonium. Such a system of reactors would put into wide circulation a material that is readily convertible to atomic bombs.

The incorrect testimony of Lee V. Gossick, the executive director of the Nuclear Regulatory Commission, will be the subject Monday of hearings by the House Subcommittee on Energy and Environment. It is one of the two Congressional subcommittees to which Mr. Gossick was accused of giving incorrect or "inherently ambiguous" statements.

The special investigation of Mr. Gossick's testimony was described in a 550-page report prepared over a period of more than two months by the commission's general counsel and the head of its inspection and audit office. The report became available yesterday after the Commission sent it to the Energy and Environment Subcommittee.

The report attempts to determine what various members of the commission and its staff knew about the still mysterious disappearance of a large amount of highly enriched uranium from a nuclear facility in Apollo, Pa., in the mid-1960's.

Over the years, since Government officials

repeatedly stated that there was no evidence the highly enriched uranium had been stolen from the Apollo facility. But in the last year increasing evidence has emerged that some officials, including some in the Central Intelligence Agency, were convinced the material had been stolen.

Last November, for example, the Energy Department made public a large group of documents concerning Apollo, two of which indicated that in 1976 the Federal Bureau of Investigation, the National Security Council and the C.I.A. suspected that Israel might have stolen the highly enriched uranium.

One month ago, in response to a request under the Freedom of Information Act by the Natural Resources Defense Council, an environmental group, the Central Intelligence Agency made public a 1974 document that concluded Israel had already produced nuclear weapons partly with uranium it had obtained "by clandestine means."

The notations on the 1974 C.I.A. document indicate it was read by at least two members of the Atomic Energy Commission, the agency that preceded the Nuclear Regulatory Commission. Furthermore, in February 1976, the commission and a small number of staff members were briefed by the C.I.A. about the Apollo incident.

Since the special investigation report shows differences of opinion over exactly what the C.I.A. told the commission, and Mr. Gossick did not attend the secret 1976 briefing session, it remains unclear exactly what Mr. Gossick knew about the Apollo incident when he testified before the Subcommittee on Energy and Environment last July 29 and the Subcommittee on Energy and Power Aug. 9.

Mr. Gossick's statements were varied and sometimes contradictory, according to the report. At one place in his testimony, for example, he said that every possible case of diversion has been investigated and "we have no evidence that ... a significant amount of special nuclear material was stolen." A few minutes later, when specifically asked about Apollo, Mr. Gossick said he was "not familiar with the alleged circumstances about that."

The report quoted Mr. Gossick as saying he now believes he should have told the committee there was no "substantial evidence" that material had been stolen.

The loss of the highly enriched uranium at Apollo, which the Government for many years said was the result of an accounting error, is only a small part of the overall problem of controlling materials that could be fashioned into nuclear weapons.